

EXHIBIT H

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
M WAIKIKI LLC,

Plaintiff,

-v-

MARRIOTT HOTEL SERVICES, INC.,
I.S. INTERNATIONAL, INC. and IAN SCHRAGER,

Defendants.

-----X
MARRIOTT HOTEL SERVICES, INC.,

Counterclaim Plaintiff,

-v-

M WAIKIKI LLC,

Counterclaim Defendant.

Index No.: 651457/11

Hon. Eileen Bransten

SUGGESTION OF BANKRUPTCY

PLEASE TAKE NOTICE that, on August 31, 2011, plaintiff and counterclaim-defendant M Waikiki LLC ("Debtor") filed a voluntary petition in the United States Bankruptcy Court for the District of Hawaii for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), in the case *In re M Waikiki LLC*, Case No. 11-02371. A true and correct copy of the voluntary petition is attached hereto as Exhibit A.

PLEASE TAKE FURTHER NOTICE that, pursuant to section 362(a) of the Bankruptcy Code, Debtor's filing of its voluntary petition operates as a stay, applicable to all entities, of, among other things: (a) the commencement or continuation of all judicial, administrative, or other actions or proceedings against Debtor (i) that were or could have been

commenced before the commencement of Debtor's case or (ii) to recover any claims against the Debtor that arose before the commencement of the Debtor's case; (b) the enforcement, against the Debtor or against any property of the Debtor's bankruptcy estate, of a judgment obtained before the commencement of the Debtor's case; or (c) any act to obtain possession of property of or from the Debtor's bankruptcy estate, or to exercise control over property of the Debtor's bankruptcy estate.

Dated: August 31, 2011

BICKEL & BREWER

By: 

William A. Brewer III
James S. Renard (*pro hac vice*)
Alexander D. Widell
767 Fifth Avenue, 50th Floor
New York, New York 10153
Tel: (212) 489-1400

ATTORNEYS FOR M WAIKIKI LLC

808-943-5820

12:39:05 p.m. 08-31-2011

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United States Bankruptcy Court District of Hawaii		Voluntary Petition
Name of Debtor (if individual, enter Last, First, Middle): M Waikiki LLC		Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):		All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete BIN (if more than one, state all) 20-4983909		Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete BIN (if more than one, state all)
Street Address of Debtor (No. and Street, City, and State): 1776 Ala Moana Blvd. Honolulu, HI ZIP Code 96815		Street Address of Joint Debtor (No. and Street, City, and State): ZIP Code
County of Residence or of the Principal Place of Business: Honolulu		County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address): 12250 El Camino Real, Suite 220 San Diego, CA ZIP Code 92130		Mailing Address of Joint Debtor (if different from street address): ZIP Code
Location of Principal Assets of Business Debtor (if different from street address above):		
Type of Debtor (Form of Organization) (Check one box)	Nature of Business (Check one box)	Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box)
<input type="checkbox"/> Individual (includes Joint Debtors) See Exhibit D on page 2 of this form. <input checked="" type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (if debtor is not one of the above entities, check this box and state type of entity below.)	<input type="checkbox"/> Health Care Business <input checked="" type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101 (51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input type="checkbox"/> Other <input type="checkbox"/> Tax-Exempt Entity (Check box, if applicable) <input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).	<input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input checked="" type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding
Nature of Debts (Check one box)		
<input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(7) as "incurred by an individual primarily for a personal, family, or household purpose." <input checked="" type="checkbox"/> Debts are primarily business debts.		
Filing Fee (Check one box)		Chapter 11 Debtors
<input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.		<input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). <input type="checkbox"/> Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,343,300 (amount subject to adjustment on 10/1/13 and every three years thereafter). <input type="checkbox"/> Check all applicable boxes: <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
Statistical/Administrative Information		THIS SPACE IS FOR COURT USE ONLY
<input checked="" type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.		
Estimated Number of Creditors		
<input type="checkbox"/> 1-49 <input type="checkbox"/> 50-99 <input checked="" type="checkbox"/> 100-199 <input type="checkbox"/> 200-999 <input type="checkbox"/> 1,000-5,000 <input type="checkbox"/> 5,001-10,000 <input type="checkbox"/> 10,001-25,000 <input type="checkbox"/> 25,001-50,000 <input type="checkbox"/> 50,001-100,000 <input type="checkbox"/> OVER 100,000		
Estimated Assets		
<input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$5 million <input type="checkbox"/> \$5,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input checked="" type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion		
Estimated Liabilities		
<input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$5 million <input type="checkbox"/> \$5,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input checked="" type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion		

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B1 (Official Form 1X/4/10)		Page 2
Voluntary Petition (This page must be completed and filed in every case)		Name of Debtor(s): M Waikiki LLC
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet)		
Location Where Filed: - None -	Case Number:	Date Filed:
Location Where Filed:	Case Number:	Date Filed:
Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet)		
Name of Debtor: - None -	Case Number:	Date Filed:
District:	Relationship:	Judge:
Exhibit A (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.) <input type="checkbox"/> Exhibit A is attached and made a part of this petition.	Exhibit B (To be completed if debtor is an individual whose debts are primarily consumer debts.) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by 11 U.S.C. §342(b). X _____ Signature of Attorney for Debtor(s) (Date)	
Exhibit C Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety? <input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition. <input checked="" type="checkbox"/> No.		
Exhibit D (To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.) <input type="checkbox"/> Exhibit D completed and signed by the debtor is attached and made a part of this petition. If this is a joint petition: <input type="checkbox"/> Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.		
Information Regarding the Debtor - Venue (Check any applicable box) <input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District. <input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.		
Certification by a Debtor Who Resides as a Tenant of Residential Property (Check all applicable boxes) <input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.) _____ (Name of landlord that obtained judgment) _____ (Address of landlord) <input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and <input type="checkbox"/> Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition. <input type="checkbox"/> Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(i)).		

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BI (Official Form 1)(4/10)

Voluntary Petition

(This page must be completed and filed in every case.)

Name of Debtor(s):
M Waikiki LLC

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. §342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

☒ Signature of Debtor

☒ Signature of Joint Debtor

Telephone Number (If not represented by attorney)

Date

Signature of Attorney*

☒ Signature of Attorney for Debtor(s)
Patrick J. Neligan, Jr. 14886000
Printed Name of Attorney for Debtor(s)
Neligan Foley LLP
Firm Name
325 N. St. Paul
Suite 3600
Dallas, TX 75201
Address
214-840-5300 Fax: 214-840-5301
Telephone Number
August 31, 2011
Date

*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

☒ Signature of Authorized Individual
Damian McKinney
Printed Name of Authorized Individual
Manager, Realty Fund, LLC, Manager M Waikiki LLC
Title of Authorized Individual
August 31, 2011
Date

Signature of a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only one box.)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. §1515 are attached.

☐ Pursuant to 11 U.S.C. §1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

☒ Signature of Foreign Representative

Printed Name of Foreign Representative

Date

Signature of Non-Attorney Bankruptcy Petition Preparer

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

Printed Name and title, if any, of Bankruptcy Petition Preparer

Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

Address

☒ Address

Date

Signature of Bankruptcy Petition Preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. §110; 18 U.S.C. §156.

**ACTION BY WRITTEN CONSENT
OF THE MEMBERS OF
M WAIKIKI LLC
a Hawaii limited liability company**

The undersigned, constituting the sole Class A Member and the sole Class C Member (collectively, the "Voting Members") of M Waikiki LLC, a Hawaii limited liability company (the "Company"), hereby adopt the following resolutions by written consent without a meeting, pursuant to Section 7.2.7 of the Second Amended and Restated Operating Agreement of the Company (the "Operating Agreement"):

WHEREAS, eRealty Fund, LLC, a California limited liability company and the manager of the Company (the "Manager"), has requested the Voting Members to execute this Action by Written Consent.

NOW, THEREFOR, BE IT RESOLVED, that in the judgment of the Voting Members it is desirable and in the best interests of the Company, its creditors, shareholders, and other interested parties that a voluntary petition for relief (the "Petition") be filed by the Company under the provisions of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), for the purpose of restructuring its debt and reorganizing its business; and be it

FURTHER RESOLVED, that the Company shall be, and it hereby is, authorized, directed, and empowered to file the Petition and to perform any and all such acts as are reasonable, advisable, expedient, convenient, proper, or necessary to effect any of the foregoing; and be it

FURTHER RESOLVED, that Damian McKinney (the "Designated Officer") is hereby authorized, directed and empowered, on behalf of and in the name of the Company: (i) to execute and verify the Petition and all other ancillary documents to cause the Petition to be filed with the United States Bankruptcy Court for the District of Hawaii and to make or cause to be made prior to execution thereof any modifications to the Petition or ancillary documents; (ii) to execute, verify, and file or cause to be filed all petitions, schedules, lists, motions, applications, and other papers or documents necessary or desirable in connection with the foregoing; and (iii) to execute and verify any and all documents necessary or appropriate in connection therewith in such form or forms as the Designated Officer may approve; and be it

FURTHER RESOLVED, that the Designated Officer be, and hereby is, authorized, directed and empowered from time to time, in the name and on behalf of the Company, to take such actions and execute and deliver such certificates, instruments, notices and documents as may be required or as the Designated Officer may deem necessary, advisable or proper to carry out and perform the obligations of the Company under the Bankruptcy Code; all such actions to be performed in such manner, and all such certificates, instruments, notices and documents to be executed and delivered in such form, as the Designated Officer performing or executing the same shall, with the advice of counsel, approve, the performance or execution thereof by such officer to be conclusive evidence of the approval thereof by such officer and by the Company; and be it

FURTHER RESOLVED, that the law firms of Neligan Foley LLP and Klevansky Piper LLP, be and hereby are authorized, empowered, and directed to represent the Company, as debtor and debtor in possession, in connection with any case commenced by or against it under the Bankruptcy Code;

FURTHER RESOLVED, that each of the Designated Officer(s) be, and each hereby is, authorized, directed and empowered to retain on behalf of the Company such other attorneys, financial advisors, and accountants as the Designated Officer(s) so acting shall deem appropriate in his or her judgment;

FURTHER RESOLVED, that, in addition to the specific authorizations heretofore conferred upon the Designated Officer, he is hereby authorized, directed and empowered, in the name and on behalf of the Company, to do or cause to be done all such further acts and to execute and deliver all such other instruments, certificates, agreements and documents as he may, with the advice of counsel, consider necessary or appropriate to enable the Company to carry out the intent and to accomplish the purpose of the foregoing resolutions; and be it

FURTHER RESOLVED, that all actions heretofore taken by the Designated Officer in connection with the foregoing resolutions be, and hereby are, confirmed, ratified and approved in all respects.

IN WITNESS WHEREOF, the undersigned, being all of the Voting Members of the Company, hereby adopt, approve and consent to this Action by Written Consent, effective as of August 31, 2011.

CLASS A MEMBER

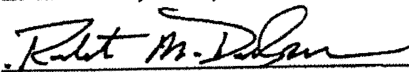
eRF HAWAII HOTEL PARTNERS II LLC,
a Delaware limited liability company

By: eRealty Fund, LLC
a California limited liability company
Its: Manager

By: _____
Damian McKinney, Manager

CLASS C MEMBER

THE DAVIDSON FAMILY TRUST DATED
DECEMBER 22, 1999, AS AMENDED

By: 
Name: Robert M. Davidson
Title: Trustee

FURTHER RESOLVED, that the law firms of Neligan Foley LLP and Klevansky Piper LLP, be and hereby are authorized, empowered, and directed to represent the Company, as debtor and debtor in possession, in connection with any case commenced by or against it under the Bankruptcy Code;

FURTHER RESOLVED, that each of the Designated Officer(s) be, and each hereby is, authorized, directed and empowered to retain on behalf of the Company such other attorneys, financial advisors, and accountants as the Designated Officer(s) so acting shall deem appropriate in his or her judgment;

FURTHER RESOLVED, that, in addition to the specific authorizations heretofore conferred upon the Designated Officer, he is hereby authorized, directed and empowered, in the name and on behalf of the Company, to do or cause to be done all such further acts and to execute and deliver all such other instruments, certificates, agreements and documents as he may, with the advice of counsel, consider necessary or appropriate to enable the Company to carry out the intent and to accomplish the purpose of the foregoing resolutions; and be it

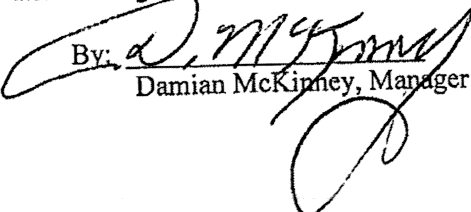
FURTHER RESOLVED, that all actions heretofore taken by the Designated Officer in connection with the foregoing resolutions be, and hereby are, confirmed, ratified and approved in all respects.

IN WITNESS WHEREOF, the undersigned, being all of the Voting Members of the Company, hereby adopt, approve and consent to this Action by Written Consent, effective as of August 31, 2011.

CLASS A MEMBER

eRF HAWAII HOTEL PARTNERS II LLC,
a Delaware limited liability company

By: eRealty Fund, LLC
a California limited liability company
Its: Manager

By: 
Damian McKinney, Manager

CLASS C MEMBER

THE DAVIDSON FAMILY TRUST DATED
DECEMBER 22, 1999, AS AMENDED

By: _____
Name: _____
Title: _____